

PRESS SUMMARY

This is the tenth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period covered: 2 March 1959

COURT RE FUSES APPLICATION TO QUASH

WHEN the trial was resumed on Monday, 2 March, the Special Court announced its refusal to quash the indictment against the 30 accused. The main amendments to the indictment sought by the Crown before the adjournment were allowed.

The defence exception that alleged actions given in three major sections of the indictment (C, D and E) were incapable of constituting overt acts of treason as well as the objection to the sub-paragraph of para 4 (b) of part B were dismissed. The Court held that in a case of an alleged conspiracy to overthrow the State by violence, words spoken or written in pursuance of the conspiracy and alleged to be the means of the achievement of the conspiracy would constitute overt acts, even if there was no incitement to sedition or violence, provided what hostile intent was manifest and they tended towards the accomplishment of the criminal design.

The defence application to quash the indictment on the ground of misjoinder was also dismissed on the acceptance by the Court that the accused were charged (in parts C, D. and E of the indictment) on the basis of a course of conduct and the Court held that the accused were not prejudiced by the joinder.

Some Particulars to be given by the Crown

The Court refused the further defence application to quash on the grounds of lack of particularity, but ordered the Crown to inform each accused upon which facts, speeches or documents (or portions thereof) it relied for the inference that it was the policy or part of the policy of the organisations to use violence against the State. The Court held that the accused were entitled to obtain this information from the Crown specifically and not in general terms by referral to the whole of the Summary of Facts supplied by the Crown.

Immediately on hearing the decision of the court, Mr. Pirow requested an adjournment of three weeks, stating that the Crown would supply the particulars ordered in two weeks, thus giving the Defence one week in which to study them.

DEFENCE ASKS FOR APPEAL COURT DECISION ON SPECIAL COURT'S RULINGS

MR. MAISELS first commented on this offer by referring to the Crown's submission during previous argument, that six months would be required to furnish these details, and then applied for judgment to be reserved for the Appeal Court on the following points:-

- (1) Was the Court correct in holding that in the case of an alleged conspiracy to overthrow the State by violence, words spoken or written in pursuance of that conspiracy would constitute overt acts, even if they did not constitute incitement to violence or sedition?
- (2) Was the Court correct in holding that the accused were charged on a course of conduct basis and that they were not prejudiced by the misjoinder in Parts C., D. and E.?
- (3) Was the Court correct in holding that the amendments covered most of the arguments levelled against the unamended indictment?

Mr. Maisels asked for judgment to be reserved immediately and for the case to be postponed until after the judgment of the Appeal Court.

Mr. Justice Rumpff doubted the competency of the Court to reserve judgment preceding conviction, but emphasised that it would be useful for the Court to have a decision from the Appeal Court on these points. The Crown indicated that postponement of the trial would be opposed on the ground that judgment could not be reserved without a conviction.

Defence Argument in Support of Appeal Court Application

Mr. Maisels opened his argument on the Court's competency to reserve points for an immediate Appeal Court judgment by quoting Section 366 of the Criminal Code: "The Court may of its own motion or at the request of the Crown or the Defence reserve any question of law for appeal to the Appellate Division". He submitted that there was nothing in this wording to indicate that a point of law could be reserved only after the conclusion of a trial, and in reply to the query by Mr. Justice Rumpff as to whether there had not to be a ground of appeal against conviction, pointed out that in any case the Crown could appeal against acquittal.

Mr. Justice Rumpff: But there must be an appeal against something?

Mr. Maisels: Yes. In this case an appeal against the Court order.

The Defence agreed that it would not be desirable for interlocutory appeals to become routine, but it lay in the discretion of the Court to prevent this.

Crown's Counter-Argument

Mr. Pirow, in reply, argued that if Mr. Maisels were correct there could be an appeal every time that particulars were refused and submitted that it was inconceivable that the intention had been to allow the accused to run to the Appeal Court twenty times during a trial.

Mr. Justice Bekker: But in any case the Court would not allow this. The case is that the Court's decision on overt acts and on misjoinder may be wrong. We can't keep the accused on trial if this is so.

Mr. Pirow then argued that the Court ought not to be influenced by the possible length of the trial unless their dismissal of the Defence application had been made with reluctance. Unless there was more than a possibility of a successful appeal, the Court ought not to agree to the postponement.

Mr. Trengrove continued the Crown argument, submitting that before Section 366 of the Code could operate, there must be a conviction or acquittal. He agreed that there were no cases covering the Defence request for an interlocutory appeal, but claimed that there were a number of decisions which showed that the Appeal Court was not prepared to consider appeals unless there were likely to be concrete results, whereas in this case the results would be academic.

All three judges expressed their disagreement with this submission, pointing out that the appeal would not be purely academic as it was concerned both with misjoinder and with overt acts.

Mr. Trengrove repeated his submission that there was no authority to take matters of this nature on interlocutory appeal and argued that misjoinder could not affect the charge of conspiracy.

Mr. Justice Bekker: But if there is misjoinder, won't the whole case be set aside?

Defence Reply to Crown

Mr. Maisels then requested the reserving of a further point of law, i.e. the non-compliance by the Crown with the provision of the Criminal Code that counts should be numbered.

Replying to the Crown, Mr. Maisels dismissed the argument that the Defence ought not to be allowed to appeal every time that particulars were refused as unworthy of reply. The Court had discretion. The Crown had argued that the Court ought not to be influenced by the length of the trial. This might be all

right for the Crown but not for the Defence. Referring to Mr. Trengrove's argument that misjoinder would not affect the conspiracy, Mr. Maisels pointed out that if the case were based on conspiracy only, the treatment of the case would be quite different. In conclusion, he submitted that Section 366 of the Code gave the same right to the Defence and the Crown and that unless there were ambiguity or absurdity in the Defence submission as to how the section should be read, there was no reason to look for the intention of the legislature. "The Crown must be desperate for a theory! It was for the Court to decide on the interpretation of the Section.

DEFENCE APPLICATION GRANTED - TRIAL ADJOURNED

The Court then granted the postponement of the trial until after the decision of the Appeal Court and fixed May 18th for the resumption of the trial with leave for the Crown to anticipate on 14 days' notice.

Mr. Pirow requested the Court to re-establish the bail which had lapsed, and when Mr. Maisels opposed this, said that the alternative would be to re-arrest the accused.

Mr. Maisels: Is this intimidation? . . . In terms of the law, once the indictment was withdrawn by the Attorney-General, the accused were no longer on trial. The accused had been called to the Court by summons, and could be similarly called in future.

Mr. Justice Rumpff: Are they regarded as still in custody?

Mr. Pirow: They are still under arrest.

Mr. Pirow then indicated that he would not argue the matter further at that stage, but if he were to make an application later to have bail re-imposed, it would be on matter of substance. He had raised the matter because at least one of the 91 accused had disappeared.

During discussion of the second trial, that of the 61 accused which had been set down for April 20th, Mr. Justice Rumpff indicated that there would have to be a postponement unless a new Court were appointed, though the accused would have to appear before the present Court on April 20th unless the Minister of Justice proclaimed otherwise.

CORRECTION TO PRESS SUMMARY NO. 9.
(Issue preceding the present one)

It is regretted that an error occurred in quoting from a section of the indictment in Press Summary No. 9.

On page 7 of that Summary, under the heading Defence objects to New Amendments, the following appeared:

"Turning to the amendments brought by the Crown, Mr. Maisels opposed the second and third amendment, particularly that which sought to delete the words 'in their lifetime' from the first paragraph of part E and the whole of the following paragraph: . . . The achievement in their lifetime of the demands set forth in the said Freedom Charter, which included, inter alia, the following demands:

1. Every man and woman shall have the right to vote for and to stand as a candidate for all bodies which make laws;
2. The national wealth of the country, the heritage of all South Africans, shall be restored to the people;
3. The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole;
4. Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger;
5. All shall have the right to occupy land wherever they choose;

This section of the Summary should read as follows:-

DEFENCE OBJECTIONS TO NEW AMENDMENTS

Turning to the amendments brought by the Crown, Mr. Maisels opposed the second and third amendment, particularly that which sought to delete the words "in their lifetime" from the first paragraph of part E. and to delete the whole of the following paragraph:-

The achievement in their lifetime of the demands set out in paragraphs 1 to 5 hereof would to the knowledge of the accused necessarily involve and was by the accused intended to involve the overthrow of the State by violence.

In place of the above, the following words were to be inserted at the end of the fifth demand as a substitution for the deleted paragraph: ". . . Which said demands the accused intended to achieve by overthrowing the State by violence."

- ends -

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